IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Case No. A.O. No. 252 of 2001
(Old No. 799 of 1996)

Smt. Rama Bansal & others -------Appellants.

Vs.

Smt. Kusum Devi & others ------Respondents.

Date of decision: 17th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Verma.

Hon'ble Mr. Justice B.S. Verma.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? ( )

Court No. 2

In the High Court of Uttaranchal at Nainital.

First Appeal From Order No. 252 of 2001.
(Old No. 799 of 1996)

(1)Smt. Rama Bansal W/o late Bihari Lal
2)Manish Bansal S/o late Bihari Lal
(3)Ashish Bansal S/o late Bihari Lal
(4)Priya Bansal S/o Late Bihari Lal
All residents of A-2/8 C.P.C. Colony
Ghanshyamdham, Lalkuwa,
District Nainital. .....Claimant/Appellants.

Vs

(1)Smt. Kusum Devi
W/o Purshottam Lal Saran
R/o 107 Shyamganj, Bareilly

(2)New India Assurance Company, Civil Lines, Bareilly.

(3)Divisional Manager, Oriental Insurance Co. Ltd. Opp. Judges Court,
Haldwani Nainital ..... Respondents.

Sri L.P. Naithani senior Advocate, assisted by
Sri Amit Bhatt, learned counsel for appellants.
Sri T.A. Khan, learned counsel for the respondent No.2.

Dated: 17th Aug.,2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This is an appeal for enhancement of award by the appellants filed against the judgment and order dated 26-2-1996, passed by the Motor Accident Claims Tribunal, /I Additional District Judge, Nainital, under section 166 of the Motor Vehicles Act, 1988 in Motor Accident Claim Case No.404 of 1991.

2- Brief facts giving rise to this appeal are that the deceased Bihari Lal aged 45½ years was employed with Century Pulp and Paper Mill Ghanshyamdham Lalkuan District Nainital, at the time of the accident as Chief Mechanical Engineer and he was earning Rs. 6,845/- per month as his salary. On the day of accident i.e. 1.5.1991 the deceased was coming on his scooter at about 9 a.m. and going towards paper Machine Road, inside the factory premises of Century Pulp and Paper, Lalkuan, District Nainital, the truck No.UP25-5391 coming from W.P.P. chipper road dashed the deceased rashly and negligently and crushed him. The claimants –appellants are the children and widow of the deceased. The Tribunal applied the multiplier of 12 and awarded compensation of Rs. 5,76,000/- against the respondent nos. 1 and 2 along with 12% interest per annum from the date of presentation of the claim petition before the tribunal.

3- The learned counsel for the appellants submitted that the learned Motor Accident Claims Tribunal, while coming to a just compensation under section 166 of the Motor Vehicle Act, 1988 took assistance of the schedule provided under section 163-A, but did not apply the multiplier of '15' as the age of the deceased was between 40 to 45 years.

4- Learned counsel for the Insurance Company relied on the reported decision in the matter of **Deepal Girishbhai Soni and others Vs. United Indian Insurance CO. Ltd. Baroda; (2004) 5 Supreme Court Cases 385** and said that the schedule appended to section 163-A can not be made basis for making award under section 166 of the

Motor Vehicles Act. In view of the law laid down in Deepal Girishbhai Soni case (supra) sections 163-A and 166 both are independent sections and the compensation are made separately under both the sections. The question before the Apex Court was whether the proceedings under section 163-A of the Motor Vehicles Act, 1988 is a final proceedings, by reason whereof, a claimant, who has been granted compensation under section 163-A, is debarred from proceeding with any further claims on the basis of fault liability in terms of section 166. The Apex Court has ruled that a claimant can not pursue his remedy thereunder simultaneously as has been held in para-57 of the reported decision (supra). Here in the present case the application has been made only under section 166. No application under section 163-A has been made. The tribunal has taken aid of schedule appended to section 163-A for coming to just compensation under section 166. In our opinion, if the party is satisfied only on payment of compensation on no fault liability and he is not going to claim the compensation on further liability then aid of schedule appended to section 163-A can be taken to come to a just compensation under section 166. Therefore, the contention of Sri L.P. Naithani, learned senior Advocate, has no force.

5- Admittedly, the age of the deceased, at the time of the accident, was 45½ years, therefore while taking aid of the schedule, appended to section 163-A of the M.V.Act, for coming to a just compensation under section 166 of the Motor Vehicles Act, the tribunal ought to have applied the multiplier of '13' on the annual income of the deceased. Therefore, we modify the award the enhance the award by aiding Rs. 48,000/- more after applying the multiplier of

‘13’. On this amount of Rs. 48,000/-(Rupees forty eight thousand), enhanced compensation, the appellants shall also be entitled for interest, as awarded by the tribunal.

6- The appeal is disposed of accordingly.

(B.S.Verma,J.) **(P.C.Verma,J.)**

ISB